HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.17597 OF 2006

Between:

Y. Jyothirmoy and others. …Petitioners

AND

The Municipal Corporation of
Hyderabad, Hyderabad, represented
by its Commissioner and another. ...Respondents

: O R D E R :

Counsel for the petitioners : Sri P.Giri Krishna

Counsel for respondent No.1 : Smt.G.Jyothi Kiran

Counsel for respondent No.2 : None.

19th January, 2007

Per G.S.SINGHVI, C.J.

The petitioners, who purchased different portions of the building known as Amrutha Business Complex, Ameerpet have filed this petition for quashing notice dated 22-8-2006 issued by Commissioner, Municipal Corporation of Hyderabad (hereinafter referred to as 'the Commissioner') under Section 636 of the Hyderabad Municipal Corporation Act, 1955 (for short, 'the 1955 Act') requiring them to demolish/remove/pull down the unauthorised construction not covered by the sanctioned plan within 24 hours of the date of receipt of the notice with the threat that if they fail to do so, Municipal Corporation of Hyderabad (for short, 'the Corporation') will take action and demolish/pull down such construction and also recover expenditure from them.

The background facts:

i) Sri Y.S.Rajesh Reddy, son of Sri Y.S.Anand Reddy, Sri K.Sudhakar Reddy, son of Dr.K.L.Reddy, Ms. K.Sunitha Reddy, daughter of Dr.K.L.Reddy and Sri Y.S.Anand Reddy, son of Sri Y.S.Konda Reddy purchased property measuring 1650 square yards bearing premises No.7-1-58 (old No.F-1-58) situated at Ward No.7, Block No.1, Ameerpet, Hyderabad from the original owners through separate registered sale deeds. They surrendered 380 square yards for road widening purpose and then entered into a development agreement with M/s.Amrutha Estates (Developer), a registered partnership firm for re-development of the property by constructing cellar, ground plus three upper floors residential building.

ii) Sri Y. S. Rajesh Reddy and three others through their GPA holder, Sri R.Narasimha Reddy submitted building plan for construction of a multistoreyed building. The then Commissioner of the Municipal Corporation of Hyderabad (for short, 'the Corporation'), vide his order dated 27-6-1987

accorded permission to the applicants for construction of cellar, ground plus three upper floors. However, the building was constructed in violation of the sanction accorded by the Commissioner, the provisions of the 1955 Act, Regulation 11 of the Zoning Regulations, 1981 and Regulation 12 of the Multistoreyed Building Regulations, 1981. Thereafter, different portions were sold to the petitioners and others by registered sale deeds and almost the entire building was put to commercial use and named as Amrutha Business Complex.

iii) In 1997, the authorities of the Corporation threatened demolition of the construction on the ground of violation of the sanctioned plan and change of use from residential to commercial. Therefore, a suit for perpetual injunction was filed in the Court of Additional Judge, City Small Causes Court-cum-VI Senior Civil Judge, City Civil Court, Hyderabad in the name of M/s.Amrutha Estates for restraining the defendant i.e., the Corporation from interfering with possession of the plaintiff. The same was registered as O.S.No.1925 of 1997. It was pleaded that the construction had been completed within three years from the date of issue of sanctioned plan; that the persons who had purchased apartments had shifted their residences and put the premises to commercial use, and that the authorities of the Corporation were trying to demolish the property. In the written statement filed on behalf of the Corporation, it was averred that the construction had been made in violation of the sanctioned plan; that there was change of the user of the suit site; that cellar floor had been converted into shops and offices against the sanctioned plan, and that even before issue of notices under Sections 452, 461 and 636 of the 1955 Act, the plaintiff

had approached the Court.

iv) On the pleadings of the parties, the trial court framed the following issues:

1. Whether the plaintiff has violated the Rules, Building bye-laws, Zoning Regulations of 1981 and deviated from sanctioned plan and permit?

2. Whether the plaintiff changed the user of the property?

3. Whether the plaintiff is entitled for perpetual injunction as prayed for?

4. To what relief?

The trial judge noted that the allegation made by the defendant regarding change of the user of the suit site and converting the cellar portion into shops and offices, which resulted in violation of the Building Rules, 1981 and Zoning Regulations, 1981 has not been substantiated. The learned trial judge took cognizance of the statement of P.W.1 K.Bhanu Murthy that the construction had been made strictly in accordance with the sanctioned plan and the fact that the defendant did not lead any evidence to substantiate the allegation of deviation from the sanctioned plan and decided issue No.1 in favour of the plaintiff. The relevant extracts of the finding recorded by the learned trial judge are reproduced below:

"……..It is for the defendant to prove as to when the inspection of its officials was made and found the alleged deviation. Further, the defendant ought to have stated specifically as to which of the Building Rules and Zoning Regulations that is violated. The defendant did not at all give all such details and further did not choose to adduce any evidence, but the statement of P.W.1 that the residents of suit premises shifted their residences in view of the increase in the commercial activity in the area by converting their portions into commercial ones would indicate that there was user of the premises for commercial purpose. If, according to the defendant, the plaintiff made conversion of the cellar floor into shops and offices, he ought to have taken action when

construction for conversion of the floor was commenced. The pleadings and evidence of the plaintiff does not show that there are shop rooms and office rooms constructed in the cellar. So, it is for the defendant to prove by positive evidence the existence of those constructions in the cellar. As

already mentioned above, the defendant did not choose to adduce any evidence on his behalf."

(emphasis supplied)

The learned trial judge also held that the change of user of certain portions of the building from residential to commercial did not justify an action for demolition after eight years of the completion of construction. Accordingly, he decreed the suit and restrained the defendant and its officers from interfering with the structure of the scheduled premises.

v) It is borne out from the record of the case that while disposing of Contempt Case No.101 of 1996 vide order dated 28-2-1996 and Writ Petition No.4795 of 1996 vide order dated 8-3-1996, this Court issued general directions for creating parking areas by demolishing the constructions made in the stilts and cellars of multistoreyed buildings.

vi) Faced with the threatened demolition of the constructions made by them in violation of the sanctioned plan and the provisions of the 1955 Act, the Andhra Pradesh Municipalities Act, 1965 and the rules and regulations framed under the two statutes, the builders and others approached the political and executive apparatus of the State and succeeded in persuading them to issue G.Os. including G.O.Ms.No.419, MA, dated 30-7-1998 for regularisation of such constructions. The validity of that G.O. was challenged by Dr.C.Kulsum Reddy and others in Writ Petition No.25011 of 1998 on the ground that the State Government does not have the power to

regularise the illegal and unauthorised constructions. A Division Bench of this Court considered the issue in the reported judgment titled **Dr. C.Kulsum Reddy v. State of Andhra Pradesh**[1] and held as under:

"The Act provides a definite mode for making constructions and if that mode is not followed there would be consequences. Every citizen needs a permission from the municipality to construct and if such construction is made without permission the only consequence is the demolition of such building in addition to prosecution in terms of various provisions of the Act. Therefore, Government can issue directions in furtherance of the objective that no construction is made in the city without permission of the Municipal authorities, but it cannot subvert the Act itself and then take refuge under Section 679-E by saying that the Government has the power to issue directions."

vii) With a view to overcome the aforementioned judgment of the High Court, the Governor of Andhra Pradesh, on the advice of the State Government, promulgated the Unauthorised Constructions in Municipal Corporations, Municipalities and Urban Development Authorities Ordinance, 2003 (A.P. Ordinance No.1 of 2003). This was replaced by the Andhra Pradesh Regularisation of Unauthorised Constructions in Municipal Corporations, Municipalities and Urban Development Authorities Act, 2003 (Act No.6 of 2003) (for short, 'the 2003 Act'). The prefatory note, which constitutes the foundation of the 2003 Act, reads as under:

"An Act to provide for the regularisation of the unauthorised constructions made in the areas of Municipal Corporations, Municipalities and Urban Development Authorities and the matters connected therewith and incidental thereto.

Whereas the Government in G.O.Ms.No.87, MA & UD

Department, dated the 12th February, 1992, have formulated a scheme to regularise the unauthorised constructions on the plots of the size of 100 sq. meters and below where the title deed vests with the plot holders irrespective of the nature of use to which they are put to use in relaxation of all rules and regulations on payment of compounding fee as may be fixed by corporation and also to regularise the unauthorised constructions of more than 100 sq.meters and upto 200 sq.meters where the title deed vests with the plot holders irrespective of the nature of the use of which they are put to use in relaxation of all rules and regulations on collection of compounding fee as shall be fixed by the Municipal Corporation of Hyderabad by collecting a penal amount at the reduced rate of Rs.100/- per sq.meter if constructed in violation of Zoning Regulations or Bye-laws and the regularisation of unauthorised constructions on the plots of the size of more than 200 sq.meters shall be made in accordance with the rules and regulations in force; made upto 31st December, 1991 in the Municipal Corporation of Hyderabad and such constructions do not affect any public interest or interfere with any public activity;

And whereas the Government in G.O.Rt.No.1235, MA & UD Department, dated the 14th August, 1992 have extended the said scheme formulated in G.O.Ms.No.87, MA & UD., dated 12th February, 1992 to all the Urban Development Authorities in the State and other Municipal Corporations, Municipalities and Gram Panchayats falling within the development areas of the Urban Development Authorities by empowering the respective authorities to exercise such powers as the Municipal Corporation of Hyderabad is exercising in G.O.Ms.No.87, MA & UD., dated the 12th February, 1992 and the said orders have been extended from time to time;

And whereas, in G.O.Rt.No.712, MA, dated the 17th June, 1995, the Government have issued orders extending the scheme formulated in G.O.Ms.No.87, MA, dated the 12th February, 1992 in respect of Municipal Corporation of Guntur, Kurnool, Warangal and Rajahmundry;

And whereas in G.O.Ms.No.289, MA, dated the 25th May, 1998, Government have issued orders extending the time limit for a further period of three months upto 31st July, 1998;

And whereas, in G.O.Ms.No.243, MA & UD dated the 22nd May, 1996, in partial modifications of the scheme formulated in G.O.Ms.No.87, MA., dated the 12th February, 1992, prescribed the ranges of penal amounts by classifying the areas and extent of the plot area thereby authorizing the respective Municipal Commissioners to regularise all unauthorised constructions by collecting the penal amounts prescribed therein;

And whereas, in G.O.Ms.No.382, MA., dated the 27th July, 1996, Government have issued orders amending the ranges of penal amounts specified in G.O.Ms.No.243, MA, dated the 22nd May, 1996 thereby enabling the respective authorities to levy penal amounts on the building with commercial character having number of floors;

And whereas in G.O.Ms.No.343, MA, dated the 2nd December, 1997, Government have prescribed different rates for regularizing constructions with Madras terrace, Mangalore tiles, A.C.Sheets and huts which shall be applicable for all Corporations, Municipalities and Urban Development Authorities except for Municipal Corporation of Hyderabad and Kakatiya Urban Development Authority;

And whereas in G.O.Ms.No.373, MA., dated the 1st July, 1998, Government have issued orders to give a one time opportunity by giving several concessions thereby facilitating the owners or individuals to come forward and declare voluntarily the unauthorised constructions made upto 30th June, 1998 and to regularise the unauthorised constructions by paying the penal amount as prescribed therein;

And whereas, in G.O.Ms.No.419, MA., dated the 30th July, 1998, Government in supersession of all the earlier orders for regularizing the unauthorised constructions made from 1st January, 1985 to 30th June, 1998 by exempting the old buildings from the purview of the regularisatin policy have issued orders framing a comprehensive building regularisation scheme;

And whereas, it was ordered in the said scheme that the regularisation of unauthorised constructions or buildings shall not be considered in the following cases and in cases where public interest and safety are likely to be affected, namely:-

(a) The land belongs to Government or Municipal or Local Body;
(b) Surplus land declared either under the Urban Land (Ceiling and Regulation) Act, 1976 or under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973;
(c) Sites affected under the alignment of Master Plan or Zonal Development Plan Roads and other Public Roads;
(d) Tank bed and Shikam Lands;
(e) Layout open spaces meant for public use;
(f) Parking spaces;
(g) Areas earmarked for recreational use in Master Plan or Zonal Development Plans;
(h) In case of Multistoried buildings unless no objection certificate is produced in respect of fire safety and height of the building from the fire services authority and Airport Authority respectively and structural stability by the competent authority concerned;
(i) Where the cases are pending before the court of law;

And whereas, the High Court of Andhra Pradesh in W.P.No.25011 of 1998, dated the 25th January, 2002 has quashed the impugned G.O.Ms.No.419, MA, dated the 30th July, 1998 on the ground that the said Government Order has been issued without any authority of law and there is no rule or any provision in the relevant Acts which give power to Government to regularise the unauthorised constructions, and it is ultra vires to the provisions of the Hyderabad Municipal Corporation Act, 1955 and the rules made thereunder;

And whereas, on quashing of the aforesaid orders of the Government consequential action for the demolition of the unauthorised construction shall have to be taken up by the Government;

And whereas such demolition of thousands of buildings shall result in wasteful expenditure causing hardship to general public and such demolition may invite litigation from the public and involves huge expenditure from the State exchequer;

And whereas the Government have regularised several unauthorised constructions as per the Government orders issued from time to time and several persons paid huge amounts in response to the orders issued by the Government in G.O.Ms.No.419, MA, dated the 30th July, 1998;

And whereas to avoid such hardship, huge financial expenditure and litigation, the Government have decided to

enact a law to empower the Government to regularise the unauthorised constructions made in the said Urban areas and to validate the actions of the authorities in regularizing the unauthorised constructions in pursuance of the orders issued by the Government from time to time;"

Sections 1, 2 and 3 of the 2003 Act also read as under:

"1. Short title and commencement:-(1) This Act may be called the Andhra Pradesh Regularisation of the Unauthorised Constructions in Municipal Corporations, Municipalities and Urban Development Authorities Act, 2003.

(2) It shall be deemed to have come into force on the 12th February, 1992.

2. Regularisation of unauthorised constructions:- Notwithstanding anything contained in the Hyderabad Municipal Corporations Act, 1955, the Andhra Pradesh Municipalities Act, 1965 and the Andhra Pradesh Urban Areas (Development) Act, 1975, the Government shall have the power to regularise the unauthorised constructions made by the owners or individuals who constructed the buildings unauthorisedly or in deviation of the sanctioned plan upto 30th June, 1998 filed voluntary declaration or application for regularisation as stipulated under various Government Orders and to regularise the same after levying the penal amount in accordance with the procedure prescribed or the orders issued in this regard.

3. Validation:-Notwithstanding anything contained in the Hyderabad Municipal Corporation Act, 1955, the Andhra Pradesh Municipalities Act, 1965 and the Andhra Pradesh Urban Areas (Development) Act, 1975 and in any judgment, decree or order of any Court, Tribunal or other authority contrary to the various Government Orders including orders issued in G.O.Ms.No.419, MA, dated the 30th July, 1998 authorising the competent authorities to regularise the unauthorised constructions and the constructions made in deviation to the sanctioned plan in respect of the voluntary declarations or applications filed as stipulated in various Government Orders shall be regularised after levying the penal amount and collection thereof as specified in accordance with the procedure prescribed or the orders issued for regularisation

of deviated or unauthorised constructions of buildings, shall be deemed always to have been, validly issued and accordingly:-

(a) all acts, proceedings, things done, taken or being taken by the State Government or by any Officer of the State Government or by any other authority in connection with the regularisation of unauthorised constructions and levy and collection of penal amounts thereon under the Government Orders shall be deemed to have always been, done or taken in accordance with law;

(b) no suit or other proceedings shall be instituted, maintained or continued in any Court, Tribunal or before any authority for the refund of any such penal amount; and

(c) no court shall enforce any decree or order directing the refund of any such penal amount."

viii) It is also borne out from the record that one Sri M.V.Srinivas, son of late M.Krishna Murthy filed Writ Petition No.22953 of 2005 with the complaint that the authorities of the Corporation have failed to take action against the illegal construction made on the eastern side of Manasa Apartments bearing Municipal No.1-11-110/17, Tatachari Colony, Shayamlal Buildings, Begumpet, Hyderabad and adjacent to house bearing No.1-11-110/98/2, Street No.6, Lane No.6 situated at Shaymlal Buildings, Begumpet, Hyderabad. The learned Single Judge dismissed the writ petition by observing that the petitioner has not given details of the ownership of the vacant site adjacent to Manasa Apartments and has not impleaded the persons raising illegal constructions as parties.

ix) Feeling aggrieved by the order of the learned Single Judge, Sri M.V.Srinivas filed an appeal under Clause 15 of the Letters Patent, which was registered as Writ Appeal No.2130 of 2005. While issuing notice of the appeal on 8-11-2005, the Division Bench accepted the appellant's prayer for impleadment of the persons raising illegal constructions as

respondent Nos.4 and 5. Simultaneously, a direction was issued to the Commissioner of the Corporation to ensure that no further construction is made by the newly added respondents despite the order of injunction passed by I Junior Civil Judge, City Civil Court, Secunderabad in O.S.No.1428 of 2005. On 21-12-2005, the Division Bench passed a detailed order, the relevant portions of which are extracted below:

"We have heard learned counsel for the parties and perused the record. Ordinarily, this Court is loath to entertain a writ petition in a matter, which is substantially *subjudice* before a Civil Court. But keeping in view the enormity and magnitude of the problem created due to large scale illegal/unauthorized constructions in the city of Hyderabad and elsewhere and grant of temporary injunction by the Civil Courts entitling the violators of the law to continue with illegal constructions, we have thought it proper to entertain this petition in larger public interest.

The appellant's grievance is that even though respondent Nos.4 and 5 have raised construction in violation of the sanctioned building plan, belated action taken by the authorities of the Municipal Corporation for demolition of unauthorized structure has been gravely impeded on account of injunction order, dated 26-10-2005, passed by I Junior Civil Judge, City Civil Court, Secunderabad, in I.A.No.1341 of 2005 in O.S.No.1428 of 2005.

We have perused the interim order dated 26-10-2005 passed by the learned I Junior Civil Judge and are prima facie of the view that the Court should not have passed an unrestricted injunction entitling respondents 4 and 5 to continue with the illegal constructions. Unfortunately for the said respondents and fortunately for the public at large, the Division Bench had directed Commissioner, Municipal Corporation to ensure that respondents No.4 and 5 are not allowed to raise further construction.

We are informed by the learned counsel for the appellant and counsel representing Municipal Corporation, Hyderabad, that a very large number of similar cases are

pending in the Civil Courts at Hyderabad and Secunderabad.

Learned counsel representing Municipal Corporation is directed to supply a list of such cases to this Court by 26-12-2005. A list of such cases should also be furnished to Chief Judge, City Civil Court, Hyderabad within seven (7) days from today. A list of the cases in which application(s) may have been filed by the Municipal Corporation or any of its functionary for vacating the ad interim injunction must also be supplied to the Chief Judge, City Civil Court, Hyderabad. On receipt of such lists, the Chief Judge should transfer all the cases to two Courts having jurisdiction over the matter. The Presiding Officers of those Courts must within next 60 days dispose of all pending applications in which ex parte injunction may have been passed against the action taken by the Municipal Corporation and its functionaries for demolition of illegal constructions as also the applications filed by the Municipal Corporation and its functionaries for vacating interim injunctions.

While disposing of the applications for injunction, the learned judicial officers shall examine each case on merits and pass appropriate order without being influenced by the fact that the matter is being monitored by this Court. However, in no case, order of injunction *ex parte* or otherwise should be passed entitling the plaintiff to continue with the illegal construction.

The Chief Judge, City Civil Court, Hyderabad, is directed to submit a report to this Court within six (6) weeks of the action taken by him and officers subordinate to him in furtherance of this order.

In order to stop the menace of illegal constructions in the city of Hyderabad which causes incalculable injury to the public at large, we deem it proper to direct the authorities of Municipal Corporation of Hyderabad, the State Government and all other competent authorities not to regularize any illegal construction whether by administrative action or otherwise.

The petition be listed for further consideration on 02-02-2006."

x) By taking cue from order dated 28-2-1996 passed in Contempt Case No.101 of 1996, order dated 8-3-1996

passed in Writ Petition No.4795 of 1996 and judgment dated 21-12-2005 in Writ Appeal No.2130 of 2005, the Commissioner issued notices dated 16-3-2006 under Section 636 of the 1955 Act requiring the petitioners to remove the unauthorised structures constructed in stilt/cellar/sub-cellar within three days. Paragraphs 3 to 6 of the notice read as under:

"The Hon'ble High Court in the order in suo motu contempt case in the reference 1st cited has ordered that steps be taken immediately for creation of parking areas with a view to reduce traffic congestion being created on account of cars being parked on roads for want of parking within the premises. Similarly, the Hon'ble High Court in Writ Petition in the reference 2nd cited has directed the MCH to inform the steps the MCH has undertaken to enforce the regulations.

Further, the Hon'ble High Court directed the Municipal Corporation of Hyderabad in W.A.No.2130/2005 to remove the illegal constructions made in the cellars and sub-cellars shall continue unabated. In the first instance, a notice be given to the owner of the building to voluntarily remove the illegal construction and put the cellar and sub-cellar to the same use for which they were constructed. If the owners fail to take remedial measures, then the competent authority shall ensure that illegal constructions are removed by using all legally permissive measures, including force.

As per the reference 3rd cited, the regularisation in stilt floor is not considered as per item No.11(f) regarding parking area.

You are hereby directed to remove the said unauthorised structure constructed in stilt/cellar/sub-cellar within (3) days/hours failing which action will be initiated by the MCH as per the provisions of the HMC Act, 1955."

xi) The petitioners challenged the above mentioned notice in Writ Petition No.5798 of 2006, which was disposed of by the learned Single Judge vide his order dated 23-3-2006, who, after noticing that the relevant provision for issue of notice in

such matters is Section 452 of the 1955 Act, held that it is for the respondents to point out whether the petitioners have converted the parking place into shops. The learned Single Judge directed that notice dated 16-3-2006 be treated as show cause notice only and granted one week's time to the petitioners to file representation/explanation with a further direction that till the decision of the representation, the respondent shall not remove or demolish the premises of the petitioners.

xii) Soon thereafter, the petitioners submitted a joint representation dated 31-3-2006 to the Commissioner and opposed the demolition of their premises. They relied on the permission accorded by the Commissioner vide order dated 27-6-1987 to the owners to construct cellar, ground floor plus three upper floors, decree dated 28-8-2002 passed in O.S.No.1925 of 1997 and pleaded that there was no complaint of inconvenience or public nuisance either from the inmates or from the general public warranting demolition of their premises. They also pointed out that more than 4000 square feet was available for car parking and they were prepared to provide another 1000 square feet for that purpose. After considering the representation of the petitioners, the Commissioner issued notice dated 22-8-2006, which is subject matter of challenge in this petition. The Commissioner held that the cellar is meant exclusively for parking and, therefore, the petitioners should demolish/remove/pull down the unauthorised construction, which is not covered by the sanctioned plan.

Pleadings of the parties:

i) In the affidavit filed by petitioner No.1, Y.Jyothirmoy, it has been averred that the petitioners purchased different shops in

Amrutha Business Complex through registered sale deeds for a valuable consideration in 1992 and onwards and they have been running Medical Stores, STD Booth, Optical Shop, Venetian Blinds, Travel Agency, Eye Clinic and Homoeo Clinic for the last about 15 years; that they have been paying property tax at commercial rates; that notice dated 16-3-2006 issued by the Commissioner was nullified by the High Court; that in view of the judgment and decree dated 28-8-2002 passed by Additional Judge, City Small Causes Court-cum-VI Senior Civil Judge, City Civil Court, Hyderabad in O.S.No.1925 of 1997, the authorities of the Corporation cannot demolish their premises; that about 2000 square feet of parking space is available in Amrutha Business Complex and there is no complaint from any quarter with regard to parking space or nuisance; that they are ready to provide 1000 square feet of additional parking space, and that if their premises are demolished, they will be put to serious injury. Along with the writ petition, the petitioners filed copies of notices dated 22-8-2006 and 16-3-2006, judgment dated 28-8-2002 of the trial court in O.S.No.1925 of 1997, sale deed dated 25-11-2006 executed by Y.S.Rajesh Reddy and three others in favour of Y.Jyothirmoy and Smt.Vijayalakshmi, sale deed dated 26-8-2004 executed by Sri T.R.Venugopal (petitioner No.7) in favour of D.V.Rayudu (petitioner No.5), order dated 21-12-2005 passed in Writ Appeal No.2130 of 2005, sanction order dated 27-6-1987, order dated 23-3-2006 passed in Writ Petition No.5798 of 2006 and joint representation dated 31-3-2006.

ii) In the counter affidavit filed by him on behalf of the Corporation, Sri K.Dhananjaya Reddy (Additional Commissioner) averred that permission was granted for

construction of cellar for parking, ground floor plus three upper floors subject to certain conditions, but the cellar has been converted into shops and, on that account, the public and visitors of the building are parking their vehicles outside on 100 feet wide busy road, which is causing lot of inconvenience and traffic hindrance. According to Sri Dhananjaya Reddy, even as per G.O.Ms.No.419, MA, dated 30-7-1998 issued by the government for regularisation of unauthorised constructions, the structures made in the parking space could not be regularised. The deponent has also highlighted the traffic problems in the twin cities due to mis-utilisation of parking spaces in apartments, complexes and buildings.

iii) In the rejoinder affidavit filed by him, petitioner No.1, Y. Jyothirmoy has again relied on the judgment and decree dated 28-8-2002 passed in O.S.No.1925 of 1997 and denied that vehicles are being parked on 100 feet wide road resulting in traffic congestion.

Arguments of this case were heard on 20-11-2006 and the matter was adjourned to 27-11-2006 to enable the counsel for the petitioners to seek instructions from his clients and make a statement. On 29-11-2006, further arguments were heard and the oral request made by the counsel for the petitioners for impleadment of M/s.Amrutha Estates as party to the writ petition was accepted. Simultaneously, notice was ordered to be issued to the added respondent for 20-12-2006. Accordingly, M/s.Amrutha Estates through its Managing Partner, Sri Y.Rajiv Reddy, S/o.Y.Chinapa Reddy, resident of 8-2-703, Road No.12, Banjara Hills, Hyderabad was added as respondent No.2. The record of the case shows that the notice issued to respondent No.2 has been duly served.

After impleadment of M/s.Amrutha Estates as respondent No.2, the petitioners filed three miscellaneous petitions. In the first petition, which

was registered as WPMP.No.22065 of 2006, the petitioners prayed for the stay of demolition of the premises in the stilt/cellar of Amrutha Business Complex. In the second petition, which was registered as WPMP.No.31599 of 2006, the petitioners prayed for placing on record additional affidavit of petitioner No.1 along with copy of G.O.Ms.No.508, MA, dated 15-11-2002, copy of sale deed dated 13-3-1990 executed by Y.S.Rajesh Reddy and three others in favour of Smt. Pidikiti Jyothi Rani, wife of Dr. P.D. Koteswara Rao, copy of sale deed dated 7-2-1990 executed by Y.S.Rajesh Reddy and three others in favour of Sri (Dr.) P.Rakesh and Smt.(Dr.) P.Vidya Rakesh etc. and receipts showing deposit of some amount with the Corporation. In the third petition i.e., WPMP.No.34015 of 2006, the petitioners prayed for amendment of the writ petition by adding paragraph 12 A in the following terms:

> "I submit the 2nd respondent has illegally and unauthorisedly constructed the shops in the cellar/stilt in the Amrutha Business Center and sold away the shops to petitioners fraudulently and to gain illegally that we are entitled to claim damages in case the M.C.H. is directed to demolish our premises."

They also sought amendment of the prayer clause by making the following additional prayer:

> "In alternative, direct the 2nd respondent to pay damages to the petitioners and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The Corporation also filed WPMP.No.30776 of 2006 for placing on record copy of the sanctioned building plan. Three of these petitions i.e., WPMP.Nos.34015 of 2006, 31599 of 2006 and 30776 of 2006 were allowed on 27-12-2006, on which date further arguments were heard and the case was adjourned for today, 19-1-2007.

The petitioners also filed an undertaking vide U.S.R.No.10639 of 2006 to shift their business to other places. For the sake of reference, the undertaking is reproduced below:

"It is submitted that the petitioners are doing different businesses in Amrutha Business Center, bearing Door No.7-1-58 at Ameerpet, Hyderabad to shift their business to other places and to secure other business premises in other locality of Hyderabad, the petitioners have to incur huge amounts and it will also take lot of time.

Hence, the petitioners require at least one year time to remove/pull down their premises at Amrutha Business Complex."

Arguments:

Sri P.Giri Krishna, learned counsel for the petitioners strongly relied on the judgment and decree dated 28-8-2002 passed in O.S.No.1925 of 1997 – **M/s.Amrutha Estates v. Municipal Corporation of Hyderabad** and argued that in view of the finding recorded by the learned Additional Judge, City Small Causes Court-cum-VI Senior Civil Judge, City Civil Court, Hyderabad, that the defendant has failed to prove the violation of the Building Rules and Zoning Regulations, notices dated 16-3-2006 and 22-8-2006 are liable to be quashed. Learned counsel emphasized that on the date of filing the suit, Y.S.Rajesh Reddy and three others had sold different shops constructed in the stilt and cellar to the petitioners and, therefore, they are entitled to the benefit of the perpetual injunction granted by the civil court, which prohibits the Corporation and its functionaries from demolishing the construction. He then argued that even if this Court comes to the conclusion that the petitioners cannot take advantage of the judgment and decree dated 28-8-2002, the impugned notices are liable to be nullified on the ground of violation of the rules of natural justice because the Commissioner did not give sufficient time to them to explain their position and no reason has been assigned for discarding the detailed explanation furnished in the form of joint representation dated 31-3-2006. Sri Giri Krishna then referred to G.O.Ms.No.508, MA, dated 15-11-2002 to show that in exercise of the power conferred upon it under Section 12(2) of the Andhra Pradesh Urban Areas (Development) Act, 1975 (for short, 'the 1975 Act'), the State Government has declared Ameerpet Road i.e., from

Ameerpet Junction – Begumpet Railway Crossing via Greenlands Junction as commercial zone, and argued that the use of the building in question for commercial purposes is liable to be regularised on payment of the impact fee and other usual charges. Learned counsel submitted that the Court should direct the owners to take appropriate action in accordance with paragraph 11 of G.O.Ms.No.508, MA, dated 15-11-2002 and seek regularisation of the commercial use of the residential premises by depositing the impact fee and other usual charges. Lastly, Sri Giri Krishna argued that in the event of non-acceptance of the contentions urged by him, the Court should order respondent No.2 to compensate the petitioners by refunding the price paid by them with interest at the prevailing bank rate.

Mrs. G.Jyothi Kiran, learned counsel for the Corporation argued that the conversion of cellar and stilt meant for parking of vehicles into shops etc., is a blatant violation of the provisions of the 1955 Act, Regulation 11 of the Zoning Regulations, 1981 and Regulation 12 of the Multistoreyed Building Regulations, 1981 apart from the sanctioned building plan and, therefore, the action initiated by the Corporation for demolition of the unauthorised construction cannot be termed as illegal or arbitrary so as to warrant interference by this Court under Article 226 of the Constitution of India. She emphasized that the Commissioner had accorded permission for construction of cellar, ground floor plus three upper floors only and, therefore, the construction made in the cellar, which is exclusively meant for parking of vehicles must be treated as a gross violation of the statutory provisions as well as sanctioned plan and the Court may not interfere with the notices issued by the Corporation requiring the petitioners to bring the premises (cellar) to its original status. Mrs. Jyothi Kiran then argued that the petitioners cannot take benefit of the judgment and decree dated 28-8-2002 passed in O.S.No.1925 of 1997 because the same does not have the effect of restraining the Corporation and its functionaries from removing the unauthorised constructions made in the cellar portion of the building. Learned counsel submitted that the main issue decided in the suit was

whether the plaintiff changed the user of the property from residential to commercial and the court below held that the use of residential building for commercial activities did not warrant demolition of the same by the defendant after eight years. She pointed out that the defendant's plea regarding construction of shop and office rooms in the cellar portion was specifically discarded by the trial judge and argued that the petitioners, who are doing business in the cellar portion cannot take advantage of the injunction order passed by the civil court.

Consideration by the Court:

In all developed and developing countries, great emphasis has been laid on the planned development of cities and urban areas. In developed countries, the objective of planned development has been achieved by rigorous enforcement of plans prepared after thorough study of complex issues and scientific research and rationalization of laws by way of legislative enactments. The people of those countries have greatly contributed to the concept of planned development by strictly adhering to zoning and building regulations. They, by and large, exhibit total respect for the system based on rule of law and seldom there is a complaint of violation of the building/zoning regulations while constructing buildings, residential or commercial. The situation in developing countries like ours is substantially different. Though the legislatures have, from time to time, enacted laws for ensuring planned development of the cities and urban areas, the same have been violated with impunity. In the last four decades, almost all cities, big or small, have seen un-planned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned plans. In most of the cases of illegal and unauthorised constructions, the officers of

the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions or the sanctioned plans and those who directly or indirectly support such violations are perhaps totally unmindful of the grave adverse consequences on the present as well as future generations of the people living in un-planned cities. They do not realize that once a building is constructed in violation of the relevant laws or sanctioned plan or is used for a purpose other than the one specified in the Master Plan or Zonal Development Plan, a chain of reactions occurs. Such constructions put unbearable burden on the public facilities like water, electricity, sewerage etc. apart from creating chaos on the roads. If the area earmarked for parking in multistoreyed buildings, apartments and complexes is used for commercial activities, the residents and/or users of the buildings are compelled to park their vehicles in side lanes and public roads, which are meant to be used by the general public. As a consequence, others for whose benefit side lanes etc. are constructed are compelled to use main roads leading to traffic congestion and accidents resulting in loss of human lives. The pollution caused due to traffic congestion affects the health of road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases, Asthma, Allergy and even more dreaded diseases like Cancer. It can only be a matter of imagination how much the government has to spend on controlling pollution and adverse impact on the environment of the area caused due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions.

In **Friends Colony Development Committee v. State of Orissa**[2], the Supreme Court emphasised the need of planned development of the cities in the following words:

> “In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.”

The Supreme Court then took cognizance of the large number of illegal constructions made in the city of Cuttack in violation of the Master Plan and sanctioned plan and held:

> “Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffers unbearable burden and is often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the designs of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorised constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and

to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. At the same time, in order to secure vigilant performance of duties, responsibility should be fixed on the officials whose duty it was to prevent unauthorised constructions, but who failed in doing so either by negligence or by connivance."

In **K. Ramdas Shenoy v. Chief Officers, Town Municipal Council, Udipi**[3], the Supreme Court considered whether the Town Planning Scheme framed under Madras Town Planning Act, 1920 could be violated by the Municipal Council and permission granted for construction of a cinema building in a residential area. While dealing with the objection raised by the builder to the locus standi of the petitioner on the premise that the mere grant of licence to construct a cinema building will not cause any injury to the resident and he cannot seek intervention of the Court till the building is actually used as cinema hall, the Supreme Court observed:

"The appellant can challenge at the threshold when the Scheme which is framed for the benefit of the residents in that area is violated by the Municipality. The Municipality acts for the public benefit in enforcing the Scheme. Where the Municipality acts in excess of the powers conferred by the Act or abuses those powers then in those cases it is not exercising its jurisdiction irregularly or wrongly but it is usurping powers which it does not possess. The right to build on his own land is a right incidental to the ownership of that land. Within the Municipality the exercise of that right has been regulated in the interest of the community residing within the limits of the Municipal Committee. If under pretence of any authority which the law does give to the Municipality it goes beyond the line of its authority, and infringes or violates the rights of others, it becomes like all other individuals amenable to the jurisdiction of the courts. If

sanction is given to build by contravening a bye-law the jurisdiction of the courts will be invoked on the ground that the approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative."

(Underlining is ours)

The Supreme Court then considered whether the illegal construction of a cinema building materially affects the right to enjoyment of the property by persons residing in their area and held:

"An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorised construction. The Scheme is for the benefit of the residents of the locality. The Municipality acts in aid of the Scheme. The rights of the residents in the area are invaded by an illegal construction of a cinema building. It has to be remembered that a scheme in a residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the Municipality the courts will quash orders passed by Municipalities in such cases."

The Supreme Court also rejected the plea of the respondent that the building construction in violation of the Town Planning Scheme should not be disturbed because the petitioner has spent huge money over it and held:

"The High Court was not correct in holding that though the impeached resolution sanctioning plan for conversion of building into a cinema was in violation of the Town Planning Scheme yet it could not be disturbed because Respondent 3 is likely to have spent money. An excess of statutory power cannot be validated by acquiescence in or by the operation of an estoppel. The Court declines to interfere for the assistance of persons who seek its aid to relieve them against express statutory provision. Lord Selborne in **Maddison v. Alderson {(1883) 8 AC 467}** said that courts of equity would not permit the statute to be made an instrument of fraud. The impeached resolution of the Municipality has no legal foundation. The High Court was wrong in not quashing the resolution on the

surmise that money might have been spent. Illegality is incurable."

In **Dr. G.N. Khajuria v. Delhi Development Authority**[4], the Supreme Court held that allotment of land reserved for park in a residential colony for nursery school amounted to misuse of power and was liable to be quashed. Their Lordships further held that the mere fact that some construction had already been raised by the allottee was not relevant for determining the legality of the allotment.

In **M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu**[5], the Supreme Court considered the question whether the construction of underground shopping complex in a park is legally permissible. While declaring that the construction was illegal and upholding the direction of the High Court for demolition thereof, their Lordships of the Supreme Court laid down the following propositions:

1) By allowing underground construction the Mahapalika has deprived itself of its obligatory duties to maintain as is required under Section 114 of the U.P. Municipal Corporation Act, 1959. But then one of the obligatory functions of the Mahapalika under Section 114 is also to construct and maintain parking lots. To that extent some area of the park could be used for the purpose of constructing an underground parking lot. But that can only be done after proper study has been made of the locality, including density of the population living in the area, the floating population and other certain relevant considerations. This study was never done.

2) The Mahapalika is the trustee for the proper management of the park. When the true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by the Supreme Court in **Span Resort case {M.C. Mehta v. Kamal Nath (Span Resort case) – (1997) 1 SCC 388}**. Public trust doctrine is part of Indian law. This public trust doctrine in our country has grown from Article 21 of the Constitution.

3) Action of the Mahapalika in agreeing to the construction of an underground shopping complex in contravention of the provisions of the Act and then entering into an agreement with the builder against settled norms was wholly illegal and has been held to be so by the High Court. No doubt the Mahapalika is a continuing body and it will

be estopped from changing its stand in the given case. But when the Mahapalika finds that its action was contrary to the provisions of law by which it was constituted there could certainly be no impediment in its way to change its stand. There cannot be any estoppel operating against the Mahapalika.

4) No consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles."

Rejecting the plea of the builder that it had made huge investment for construction of underground shopping complex, the Supreme Court observed:

"In this case the builder got an interim order from this Court and on the strength of that order got sanction of the plan from the Mahapalika and no objection from LDA. It has no doubt invested considerable amount on the construction which is 80% complete and by any standard is a first class construction. Why should the builder take such a risk when the interim order was specific that the builder will make construction at its own risk and will not claim any equity if the decision in the appeal goes against it? The builder is not an innocent player in this murky deal when it was able to get the resolutions of the Mahapalika in its favour and the impugned agreement executed. Now, construction of shops will bring in more congestion and with that the area will get more polluted. Any commercial activity now in this unauthorised construction will put additional burden on the locality. The primary concern of the Court is to eliminate the negative impact the underground shopping complex will have on the environmental conditions in the area and the congestion that will aggravate on account of increased traffic and

people visiting the complex. There is no alternative to this except to dismantle the whole structure and restore the park to its original condition leaving a portion constructed for parking as required under clause (ix-a) of Section 114 of the U.P. Municipal Corporation Act, 1959."

In **M.C. Mehta v. Union of India**[6], the Supreme Court emphasized the need of strict adherence to the Master Plan prepared by the experts after taking into account various aspects like healthy living, environment, lung space need, land use intensity, areas where the residential houses are to be built and where the commercial buildings are to be located, need of household industries, etc. and held that residential houses cannot be converted into commercial shops and residential properties cannot be used for commercial and trading activities.

In **S.N. Chandrasekhar v. State of Karnataka**[7], the Supreme Court interpreted the provisions of Karnataka Town and Country Planning Act, 1961 and held that the plot earmarked for residential purpose cannot be converted into commercial by allowing the allottee to start a restaurant.

Unfortunately, despite repeated adverse judgments by the Supreme Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, master plans, zonal development plans, sanctioned plans etc., have received encouragement and support from the legislative wing of the State. As and when the courts have passed orders or the officers of local bodies have taken action for ensuring rigorous compliance of laws relating to planned development of the cities and urban areas and issued directions or taken action for demolition of the illegal/unauthorised constructions, the State has come forward to protect the interest of these people either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such laws have done irreparable harm to the concept of planned

development of the cities and urban areas. If the representatives of the people do not take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, even the rural areas of the country will soon witness similar chaotic conditions.

So far as the State of Andhra Pradesh is concerned, the concept of planned development has gone haywire in almost all the cities including Hyderabad, Visakhapatnam, Vijayawada and Warangal on account of unchecked illegal and unauthorised constructions. In most of the cases, the officers of the Corporation and Hyderabad Urban Development Authority (so far as the twin cities of Hyderabad and Secunderabad are concerned) and similar bodies in other Corporation areas have miserably failed to check illegal and unauthorised constructions. In over 5,000 cases in the twin cities of Hyderabad and Secunderabad, the violators of master plan, zonal plan and sanctioned plans have succeeded in raising construction under the guise of interim orders passed by the civil courts. It should be a matter of concern of all right-thinking people that this should be so despite the enactment of various statutes by the legislature for planned development of the local areas. Hyderabad has already become an important I.T. hub and a number of multi-national companies are vying to set up their establishments in the city and nearby areas. If the menace of illegal and unauthorised construction goes unabated, not only the common man would suffer, but investors will also turn to other cities.

Here, we may briefly advert to some statutory provisions, which have bearing on the concept of planned development.

In the year 1920, the legislature of the erstwhile State of Madras enacted Madras Town Planning Act for ensuring development of the cities in accordance with the town planning schemes. Subsequently, the nomenclature of this Act was changed as the Andhra Pradesh (Andhra Area) Town Planning Act, 1920. Now, it is known as Andhra Pradesh Town Planning Act, 1920.

The 1975 Act was enacted to provide for development of urban areas in the State of Andhra Pradesh according to plan and for matters ancillary thereto. Chapter II of this Act provides for constitution of Urban Development Authority. Chapter III contains provisions relating to preparation of master plan, zonal development plans and their modification. Chapter IV contains provisions relating to development. Section 15, which forms part of this Chapter, declares that after coming into operation of any of the plans in a zone, no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan. Chapter X contains provisions for inspection of buildings and other works and demolition of buildings constructed in violation of the master plan or zonal development plan or without the permission, approval or sanction as required by Section 13.

In exercise of the power vested in it under Section 59(1) of the 1975 Act, the State Government framed the Multistoreyed Building Regulations, 1981, which were notified vide G.O.Ms.No.917, Housing, Municipal Administration and Urban Development Department, dated 11-8-1981. The State Government also framed the zoning regulations with the title Zoning Regulations of Bhagyanagar Development Area, 1981, which were notified vide G.O.Ms.No.916, MA, dated 11-8-1981 and were made applicable to all development works within the limits of Municipal Corporation of Hyderabad. Regulation 12 of the Multistoreyed Building Regulations and Regulation 11.1 and extracts of Regulation 11.2 of the Zoning Regulations, 1981, which makes it mandatory to provide parking spaces in different types of buildings, read as under:

> **"Multistoreyed Building Regulations**
>
> **12.Parking and Parking Facilities:-**
>
> (i)(a) For the use of the occupants and of persons visiting the premises for the purposes of profession, trade, business, recreation or any other work, parking space and parking facilities shall be provided within the site, to the satisfaction of the Commissioner, Municipal Corporation of Hyderabad, Vice-Chairman, BDA and

conforming to the standards specified in Appendix 'B' to these regulations; and (b) Necessary provision shall also be made for the circulation of vehicles gaining access to and from (i) the parking spaces and facilities and (ii) the premises, into the street;

(ii) The parking spaces and facilities provided under this regulation shall be maintained as such to the satisfaction of the Commissioner, M.C.H., Vice-Chairman, BDA and conforming to any bye-law that may be made by the Corporation/BDA from time to time in this regard."

"Zoning Regulations

11. Parking Spaces:-

11.1. Each off-street parking space provided for major vehicle shall not be less than 20 sq.m. area, and for scooters and cycles the parking space provided shall not be less than 3 sq.m. and 1.4. sq.m.

11.2. For building of different occupancies, off-street parking space for vehicles shall be provided as stipulated below:

(i) Major vehicles – space shall be provided as specified in Table 7 for parking motor vehicles.

TABLE – 7

Off-Street Parking Spaces

Sl.No.	Occupancy	One parking space for every
1.	Residential	
	(i) Multi-family residential	1 tenement exceeding 200 sq.m. area or 1 for two flats of 200 sq.m. each.

"

In 1950, the Hyderabad Municipal Corporation Act was enacted for constitution of the Corporation and regulating its functions etc. In 1956, Andhra Pradesh (Telangana Area) District Municipalities Act was enacted. Sections 244 to 249 of that Act provide for preparation of master plan, town development plan and layouts and obligation of the owners to comply with these plans and layouts. In 1955, the present Hyderabad Municipal Corporation Act was enacted replacing the Hyderabad Municipal Corporation Act, 1950. Chapter XI of the 1955 Act contains provisions

relating to construction, maintenance and improvement of public streets, preservation of regular line in public streets. This chapter also contains provisions concerning private streets and execution of works in or near the streets. Chapter XII, which comprises of Sections 428 to 463, relate to building regulations. Section 428, which is the first section in this chapter lays down that every person, who intends to erect a building, shall give to the Commissioner notice of his said intention in the form obtained for this purpose under Section 435 specifying the position of the building intended to be erected, the description of the building, the purpose for which it is intended, its dimensions and the name of the person whom he intends to employ to supervise its erection. Section 429 empowers the Commissioner to require plans and other documents to be furnished and also inspect any portion or portions of the foundations or walls of the existing building. Section 433 requires the giving of notice to the Commissioner in respect of any addition, alteration or repair of the existing building or removal or reconstruction of any portion of a building abutting on a street. Section 434 empowers the Commissioner to call for information etc. in respect of any proposed alteration etc. in the existing building. Section 452 empowers the Commissioner to issue notice to a person who undertakes erection or re-erection of any building or execution of any work, as described in Section 433, in violation of the provisions of the Act or bye-laws made thereunder. Sub-section (2) of Section 452 lays down that if a person to whom notice is issued under sub-section (1) fails to show cause, the Commissioner can order removal, alteration or pulling down of such building or work and recover expenses thereof from the noticee. Section 456 provides for removal of structures, trees etc., which are in dangerous state. Section 636 declares that if any work or thing requiring written permission of the Commissioner under any provision of the Act, or any rule, regulation or bye-law is done without obtaining such permission, then such work or thing shall be deemed to be unauthorised and the Commissioner can, after giving notice, require that the same be removed, pulled down or undone.

Sub-section (2) of this section empowers the Commissioner to take action for removal or alteration of such work or undoing of such thing if the noticee fails to take necessary steps. Similar provisions are contained in the Andhra Pradesh Municipal Corporations Act, 1994 and the Andhra Pradesh Municipalities Act, 1965.

A conspectus of the above mentioned provisions makes it clear that the legislative as well as executive organs of the State have not only enacted laws and framed subordinate legislations for ensuring planned development of the cities and urban areas, but have also evolved mechanism for checking un-planned development by empowering specified authorities to stop and even demolish the constructions made without obtaining sanction from the competent authority or in violation of the statutory provisions or sanctioned plan. Even while issuing orders for regularisation of unauthorised constructions, care has been taken to ensure that no compromise is made in the matters pending before the courts and the following areas, spaces and lands:

> "(a) The land belongs to Government or Municipal or Local Body;
> (b) Surplus land declared either under the Urban Land (Ceiling and Regulation) Act, 1976 or under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973;
> (c) Sites affected under the alignment of Master Plan or Zonal Development Plan Roads and other Public Roads;
> (d) Tank bed and Shikam Lands;
> (e) Layout open spaces meant for public use;
> (f) Parking spaces;
> (g) Areas earmarked for recreational use in Master Plan or Zonal Development Plans;
> (h) In case of Multistoried buildings unless no objection certificate is produced in respect of fire safety and height of the building from the fire services authority and Airport Authority respectively and structural stability by the competent authority concerned;
> (i) Where the cases are pending before the court of law."

It can, thus, be said that every precaution has been taken to ensure that in the garb of regularisation of unauthorised constructions, unscrupulous

builders are not able to usurp the land belonging to government and other local bodies, land declared surplus under the two enactments and areas earmarked for public facilities including parking.

In the above backdrop, we shall now consider whether the petitioners can take benefit of the judgment and decree dated 28-8-2002 passed by Additional Judge, City Small Causes Court-cum-VI Senior Civil Judge, City Civil Court, Hyderabad in O.S.No.1925 of 1997. A cursory reading of the judgment gives a misleading impression that the injunction granted by the Court against the demolition of the constructions is also applicable to the constructions made in the cellar/stilt, but a careful reading of the entire judgment makes it clear that the learned trial judge was not even convinced about the existence of shop and office rooms in the cellar. As a matter of fact, the learned trial judge specifically observed that the defendant has failed to prove the existence of constructions in the cellar. Therefore, the injunction granted by the trial court cannot enure to the advantage of the petitioners and the action initiated by the Corporation cannot be nullified on that basis.

The policy contained in G.O.Ms.No.508, MA, dated 15-11-2002, on which reliance has been placed by the learned counsel for the petitioners, does not, in any manner, help the cause of his clients. What the government has done by that G.O. is to modify the existing master plan and declare the roads/stretches specified in the annexure as commercial roads and authorized the Commissioner to grant building permissions for proposed construction of residential/commercial/institutional use at the option of the owner of the site abutting these roads. This is clearly borne out from paragraph 11 of that G.O., which is extracted below:

> "11. In view of the above, in exercise of the powers conferred by sub-section (2) of Section 12 of the Andhra Pradesh Urban Areas (Development) Act, 1975 (Act 1 of 1975) the Government hereby declare the roads/stretches as given in Annexure appended to this notification as commercial roads, the same having been previously published in the Extraordinary issue of Andhra Pradesh Gazette No.202, Part-I, dated 4-5-2002 as required by sub-section

(3) of the said section, to have a clear transparent policy keeping in view the road widening and civic development programmes taken by the Municipal Corporation of Hyderabad, and authorize the Commissioner, Municipal Corporation of Hyderabad to grant building permissions for proposed constructions for Residential/Commercial/Institutional use except industrial use at the option of the owners of the site abutting these roads irrespective of the usage envisaged in the Master Plan/Zonal Development Plan, subject to the following conditions namely:-

1. Commercial/Institutional use is permissible to the extent of property irrespective of usage assigned in Zonal Development Plan/Master Plan abutting the road with single or multiple title deeds, so as to encourage bigger complexes along major roads.
2. No row type shops (mulgies) shall be allowed on these roads.
3. The party shall pay the Impact Fee and other usual charges to the Municipal Corporation of Hyderabad prior to taking building permission.
4. There shall be no compound wall allowed or permitted toward road side so as to utilize the area for incidental or short duration parking.
5. The Commissioner, Municipal Corporation of Hyderabad shall levy and collect impact fee at the following rates while permitting commercial/institutional uses for the sites/properties abutting to notified commercial roads in the Municipal Corporation of Hyderabad area:-
   (a) (i) Rs.50/- per square foot for ground floor.
   (ii) Rs.50/- per square foot for the first floor.
   (iii) Rs.25/- per square foot for permitted subsequent floors.
   (b) The Commissioner, Municipal Corporation of Hyderabad is authorized to permit mixed uses i.e., either commercial or residential at the option of the owners of the site on upper floors i.e., 2nd floor and above, however, after levying impact fee of Rs.25/- per square foot for such permitted upper floors.
   (c) When mixed uses are allowed, the parking requirements for the residential flats shall be insisted on the stilt floor which may be in addition to the basement.
6. The impact fee as stipulated above and collected shall be deposited in a separate account by Municipal Corporation of Hyderabad. The amount so collected shall be utilized for the

Capital Improvement and Decongestion Plan i.e. for the works such as road widening, link roads, slip roads, parallel roads, junction improvements including traffic signals, flyovers, ROBs, RUBs, modern lighting on major roads, development of major nalas, development of parks to be executed by the Commissioner, Municipal Corporation of Hyderabad with the prior approval of Government. In no circumstances, the amount shall be credited to General Revenue and spent for salaries and maintenance works etc.

7. The Commissioner shall furnish a copy of all such plans sanctioned along the notified roads to the Vice-Chairman, Hyderabad Urban Development Authority for necessary further action to update Master Plan/Zonal Development Plan at every three months interval. The Commissioner, Municipal Corporation of Hyderabad shall also furnish periodic reports to Government.
8. That title, urban land ceiling/agriculture ceiling aspects shall be scrupulously examined by Municipal Corporation of Hyderabad before the issue of the building permission/development permission.
9. There shall be increase of 10% on impact fee (as specified at condition No.5) each year i.e., from 1st April of every year.
10. The applicant shall pay the conversion charges for the land/plot area to Hyderabad Urban Development Authority before approaching the Municipal Corporation of Hyderabad for grant of building permission and Municipal Corporation of Hyderabad shall insist the same before granting the building permissions.
11. The impact fee is not applicable to the sites which are already earmarked for commercial/institutional purpose in the Master Plan/Zonal Development Plans."

Undisputedly, Ameerpet Road i.e. from Ameerpet Junction to Begumpet Railway Crossing via Greenlands Junction is one of the several roads, which has been declared as commercial road. However, the petitioners cannot seek protection of the construction made in the cellar of Amrutha Business Complex because,

a) the disputed construction had been made much before the issue of G.O.Ms.No.508, MA, dated 15-11-2002 and there is nothing in the language of the G.O. to show that it was issued for

regularising the illegal/unauthorised constructions already made, and

b) the builder of Amrutha Business Complex is not shown to have constructed the building after obtaining authorization from the Commissioner of the Corporation in terms of paragraph 11 of the G.O.Ms.No.508, MA, dated 15-11-2002, which requires payment of impact fee and other charges to the Corporation as a condition precedent to the grant of such authorization.

We are further of the view that the petitioners cannot take advantage of the provisions contained in the Andhra Pradesh Regularisation of Unauthorised Constructions in Municipal Corporations, Municipalities and Urban Development Authorities Act, 2003 because that Act is not applicable to some of the lands and areas including the parking spaces. That apart, the petitioners have neither pleaded nor any evidence has been produced before the Court to show that any application for regularisation of the construction was made under the 2003 Act and penal amount specified by the competent authority was deposited by the owner.

In view of the above discussion, we hold that notice dated 22-8-2006 issued by the Commissioner requiring the petitioners to demolish/remove/pull down the unauthorised construction in the cellar of Amrutha Business Complex does not suffer from any constitutional or legal infirmity.

The issue which remains to be considered is whether the alternative prayer made by the petitioners for award of damages should be accepted. According to the petitioners, they had purchased shops etc. under a bona fide belief that the construction had been made in accordance with the sanctioned plan. This has not been controverted by respondent No.2 by filing counter affidavit. The situation in which the petitioners find themselves today is the sole creation of the builder i.e. respondent No.2. In a way, they have been exploited by respondent No.2, who took law into its hands, made construction in the cellar in utter violation of the sanctioned

plan and then sold constructed portions to the innocent persons. We have no doubt in our mind that if the petitioners had been made aware of the fact that the construction made by respondent No.2 was illegal, they would not have purchased the same. It is, therefore, an appropriate case in which the Court should, while enforcing the rule of law, direct the wrong doer to compensate the wronged. This approach would be in consonance with the observations made by the Supreme Court in **Friends Colony Development Committee v. State of Orissa** (supra). The principle that polluter must pay, which is usually invoked in the cases involving degradation of environment and ecology, deserves to be applied by the Court with some modification in the cases of illegal and unauthorised constructions. This would go a long way to curb the menace of such constructions which are made in gross violation of the Master Plan, Zonal Development Plan and/or sanctioned plan.

In the result, the writ petition is dismissed subject to the direction that respondent No.2 shall pay to each of the petitioners the consideration money paid by him/her at the time of sale of the illegally/unauthorisedly constructed shop etc. in the cellar of what is now known as Amrutha Business Complex. The needful be done within a period of two months. The petitioners are given three months time to vacate the shops etc. Thereafter, the Commissioner of the Corporation shall ensure demolition of the illegal/unauthorised construction made in the cellar of Amrutha Business Complex.

G.S.SINGHVI, C.J.

19th January, 2007.

C.V.NAGARJUNA REDDY,J.

ARS

Note:

L.R. copy be marked.
(By order)
svs
PS to HCJ

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[1] 2002 (3) ALT 536
[2] (2004) 8 SCC 733
[3] (1974) 2 SCC 506
[4] (1995) 5 SCC 762
[5] (1999) 6 SCC 464
[6] (2006) 3 SCC 399
[7] (2006) 3 SCC 208